

**COUNCIL OF THE COUNTY OF MAUI**  
**PLANNING AND SUSTAINABLE LAND**  
**USE COMMITTEE**

January 21, 2022

**Committee**  
**Report No. 22-8**

Honorable Chair and Members  
of the County Council  
County of Maui  
Wailuku, Maui, Hawaii

Chair and Members:

Your Planning and Sustainable Land Use Committee, having met on January 6, 2022, makes reference to the following:

1. County Communication 21-371, from Councilmember Tamara Paltin, relating to a proposed resolution entitled "REFERRING TO THE LĀNAʻI, MAUI, AND MOLOKAʻI PLANNING COMMISSIONS A PROPOSED BILL AMENDING CHAPTER 19.29, MAUI COUNTY CODE, TO PROHIBIT INSTRUMENTS OF CONVEYANCE FROM RESTRICTING THE GROWING AND HARVESTING OF ANY AGRICULTURAL CROP OR PRODUCT."

The purpose of the proposed resolution is to refer to the Lānaʻi, Maui, and Molokaʻi Planning Commissions ("Planning Commissions") a proposed bill to amend Chapter 19.29, Maui County Code, to prohibit a deed, lease, agreement of sale, mortgage, or other instruments of conveyance from restricting the growing and harvesting of any agricultural crop or product within County rural districts.

2. Miscellaneous Communication, dated July 26, 2021, from the County Clerk, transmitting a copy of Resolution 21-113, referring to the Planning Commissions a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.29, MAUI COUNTY CODE, TO PROHIBIT INSTRUMENTS OF CONVEYANCE FROM RESTRICTING THE GROWING AND HARVESTING OF ANY AGRICULTURAL CROP OR PRODUCT."

**COUNCIL OF THE COUNTY OF MAUI**  
**PLANNING AND SUSTAINABLE LAND**  
**USE COMMITTEE**

Page 2

**Committee**  
**Report No. 22-8**

The purpose of the proposed bill is to amend Chapter 19.29, Maui County Code, to prohibit a deed, lease, agreement of sale, mortgage, or other instruments of conveyance from restricting the growing and harvesting of any agricultural crop or product within County rural districts.

Your Committee notes the Planning Commissions met and reviewed the proposed bill as follows:

- October 12, 2021: Maui Planning Commission
- October 13, 2021: Molokaʻi Planning Commission
- October 20, 2021: Lānaʻi Planning Commission

Your Committee notes that a report of the Commissions' findings and recommendations was not received by the Council within 120 days in accordance with Section 8-8.6, Revised Charter of the County of Maui (1983), as amended ("Charter").

Your Committee further notes in accordance with Charter Section 8-8.6.2, "Any revisions of the general plan, zoning ordinance or other land use ordinance may be proposed by the council and shall be reviewed by the appropriate planning commission as if prepared by the planning director. Any such revision shall be referred to the appropriate planning commission by resolution. If the planning commission disapproves the proposed revision or recommends a modification thereof, not accepted by the council, or fails to make its report within a period of the hundred twenty (120) days after receipt of the referral, the council may nevertheless pass such revision, but only by the affirmative vote of at least two thirds of the council's entire membership."

The Planning Director expressed the challenges of the Department and the Planning Commissions in meeting the 120-day Charter timeline.

**COUNCIL OF THE COUNTY OF MAUI**  
**PLANNING AND SUSTAINABLE LAND**  
**USE COMMITTEE**

Page 3

**Committee**  
**Report No. 22-8**

Your Committee discussed clarifying the inability to restrict agriculture and its applicability to both owners and lessors of a property in the proposed bill.

The Department recommended amending Section 19.29.045, Maui County Code, of the proposed bill to read, "Any deed, lease, agreement of sale, mortgage, or other instrument of conveyance interpreted to contain any covenant or clause that restricts directly or indirectly the growing and harvesting of any agricultural crop or product on lands within the RU-.05, RU-1, RU-2, RU-5, and RU-10 and County Rural Districts shall be invalid and not enforceable, and that this section does not apply to any covenant or clause existing prior to the effective date of the ordinance established in this section."

Your Committee supported creating a definition for small-scale agriculture provided there are regulatory and enforcement standards in place.

Your Committee further supported additional outreach efforts with farming organizations to receive input and ensure concerns are addressed.

Your Committee agreed the bill requires further discussion. Because the bill relates to agricultural matters, your Committee recommended referral to your Agriculture and Public Trust ("APT") Committee.

Your Committee voted 7-0 to recommend referring the proposed bill to your APT Committee and filing of the communications. Committee Chair Paltin, Vice-Chair King, and members Johnson, Lee, Molina, Rawlins-Fernandez, and Sinenci voted "aye." Committee members Kama and Sugimura were excused.

Your Planning and Sustainable Land Use Committee  
**RECOMMENDS** the following:

COUNCIL OF THE COUNTY OF MAUI  
**PLANNING AND SUSTAINABLE LAND  
USE COMMITTEE**

Page 4

Committee  
Report No. 22-8

1. That Bill 16 (2022), attached hereto, entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.29, MAUI COUNTY CODE, TO PROHIBIT INSTRUMENTS OF CONVEYANCE FROM RESTRICTING THE GROWING AND HARVESTING OF ANY AGRICULTURAL CROP OR PRODUCT," be REFERRED to the Agriculture and Public Trust Committee;
2. That the Miscellaneous Communication be FILED; and
3. That County Communication 21-371 be FILED.

This report is submitted in accordance with Rule 8 of the Rules of the Council.



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TAMARA PALTIN, Chair

ORDINANCE NO. \_\_\_\_\_

BILL NO. 16 (2022)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.29, MAUI COUNTY  
CODE, TO PROHIBIT INSTRUMENTS OF CONVEYANCE FROM RESTRICTING  
THE GROWING AND HARVESTING OF ANY AGRICULTURAL CROP OR  
PRODUCT

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Chapter 19.29, Maui County Code, is amended by adding a  
new section to read as follows:

**"19.29.045 Instruments of conveyance.** No deed, lease,  
agreement of sale, mortgage, or other instrument of conveyance may  
be interpreted to contain any covenant or clause that restricts,  
directly or indirectly, the growing and harvesting of any agricultural  
crop or product on lands within the RU-0.5, RU-1, RU-2, RU-5,  
RU-10, and County rural districts. This section does not apply to  
any covenant or clause existing prior to the effective date of the  
ordinance establishing this section."

SECTION 2. New material is underscored. In printing this bill, the County  
Clerk need not include the underscoring.

SECTION 3. This Ordinance takes effect on approval.

APPROVED AS TO FORM AND LEGALITY:

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Department of the Corporation Counsel  
County of Maui

pslu:misc:031abill01:wal

INTRODUCED BY:

Jamona A. M. Baitin